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NOTES OF CASES.

Marriage—Fraud—Immediate Separation of Parties.—In an action for an annulment of a marriage on the ground of fraud brought in the Superior Court of Massachusetts by one Anders against his wife and reported in 113 N. E. 203, that court found that, "'at no time did the respondent intend to comply with her marriage contract, . . . that her only object in getting married was so that she could go back to Europe to her mother's with a marriage name and a marriage standing on account of her child and herself, or to satisfy the authorities,' and that shortly after the ceremony the respondent made an errand an excuse and left libellant and he did not see her again, but weeks later received a letter from her in Europe, stating she would never see him again. Respondent's illegitimate child was born before she met libellant." On these findings it was decided by the Supreme Court, the case being reported to it, that the petitioner was entitled to a decree. Loring, J., speaking for the court said: "It was decided in Dickinson *v.* Dickinson, [1913] P. 198, that wilful and persistent refusal on the part of the wife to allow any marital intercourse was ground for a decree of nullity of the marriage at the suit of the husband. The earlier cases in England had proceeded upon the ground that in such a case incapacity in fact on the part of the wife must be made out to enable the husband to get such a decree. But upon great consideration it was held in that case that the objects for which matrimony exists are as much defeated in case the wife wilfully persists in refusing to have marital intercourse when she can as they are in case she is willing but for some reason cannot. It has been decided here on the authority of the English cases preceding Dickinson *v.* Dickinson, ubi supra, that incapacity is ground for a decree of nullity. S——— *v.* S———, 192 Mass. 194, 77 N. E. 1025, 116 Am. St. Rep. 240. That was a case of partial malformation in both husband and wife which resulted in incapacity in case of those two. There is an earlier case in this commonwealth in which it was held that utter denial of marital intercourse was not ground for a decree of nullity. See Cowles *v.* Cowles, 112 Mass. 298. In that case it is also true that no consummation of the marriage had ever taken place. The whole contention was disposed of in that case in less than three lines in these words: 'It plainly does not go to the original validity of the marriage, and affords no ground for declaring the nullity of it.' Interpreting the terms of that opinion in the light of the petitioner's brief, it is pretty plain that in deciding Cowles *v.* Cowles the court did not have in mind the case of a woman going through the marriage service with a preconceived intention never to allow marital intercourse. But, however that may be, the facts in the case at bar go far beyond those in Cowles *v.* Cowles. In the case at bar the respondent went through the marriage service with an intention never to perform any one of

the duties of a wife. She went through the marriage service solely to secure a right to bear the name of a married woman and in that way to hide the shame of having had an illegitimate child, intending to leave her husband at the church door and not see him again. That plan she carried into effect. It is settled that a contract for the sale of goods is induced by fraud and for that reason voidable where the purchaser had an intention when the contract was made not to perform his promise to pay for them. If an intention not to perform his promise renders a contract for purchase of property voidable, a fortiori the same result must follow in case of a contract to enter into 'the holy state of matrimony.' See in this connection generally Barnes *v.* Wyethe, 28 Vt. 41. Cases where a defendant in a bastardy complain goes through the form of a marriage with the woman in question to secure his discharge intending never to live with her, may well involve other considerations. See in this connection 1 Bishop, M. D. & S. § 476, and cases last cited."

Contracts—Rescission—What Constitutes Refusal to Perform.—In Hoggson Bros. *v.* First Nat. Bank of Roswell, in the U. S. Circuit Court of Appeals, Eighth Circuit (May, 1916, 231 Fed. 869), it was held that where architects who had contracted to build a bank building for a fixed sum wrote to the bank suggesting that the work desired would cost more than the amount limited, and stated that if the bank insisted on keeping within that limit the architects would prefer not to do the work, to which the bank replied that they considered the matter off and would begin negotiations elsewhere, whereupon the architects telegraphed that they were ready and anxious to begin the work, the statement that they would prefer not to do the work was not an absolute refusal to do it, which alone is sufficient to authorize rescission by the other party, and they can recover under the contract for their services and disbursements theretofore rendered. The court cited Fay *v.* Oliver (20 Vt. 118, 49 Am. Dec. 764); Benjamin on Sales (7th ed., § 568); Dingley *v.* Oler (117 U. S. 490, 502, 6 Sup. Ct. 850, 29 L. Ed. 984); McBath *v.* Jones Cotton Co. (149 Fed. 383, 286, 79 C. C. A. 203); Smoot *v.* United States (15 Wall. 36, 49, 21 L. Ed. 107); Swiger *v.* Hayman (56 W. Va. 123, 127, 48 S. E. 839, 107 Am. St. Rep. 899, 3 Ann. Cas. 1030); Armstrong *v.* Ross (61 W. Va. 38, 48, 55 S. E. 895); Bannister *v.* Victoria Co. (63 W. Va. 502, 61 S. E. 338); Poling *v.* Broom Co. (55 W. Va. 529, 543, 47 S. E. 279); Kilgore *v.* Baptist Ass'n (90 Tex. 139, 142-143, 37 S. W. 598); Provident *v.* Ellinger (Tex. Civ. App., 164 S. W. 1024, 1026); Roehm *v.* Horst (178 U. S. 1, 12, 20 Sup. Ct. 780, 44 L. Ed. 953); Wells *v.* Hartford Manilla Co. (76 Conn. 27, 55 Atl. 599).

Negligence—Concurring with Act of God.—In Sloan *v.* White Engineering Co., 89 S. E. 564, the Supreme Court of South Carolina